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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,520	10/24/2003	Martin Diamond	799_001 CIP	9861
25191	7590	10/20/2004	EXAMINER	
BURR & BROWN PO BOX 7068 SYRACUSE, NY 13261-7068			LE, MARK T	
			ART UNIT	PAPER NUMBER

3617

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO/ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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10692520

EXAMINER

ART UNIT

PAPER

10152004

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Commissioner for Patents

1. Newly submitted claims 7-26 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Group I: Claims 1-5, drawn to a cross-tie for a railroad assembly, which is the originally claimed invention, classified in class 238, subclass 37.

Group II: New claims 7-26, drawn to a laminated assembly, classified in class 428, subclass 56.

The inventions are distinct, each from the other because inventions Group I and Group II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because for example, the combination, as evidenced by claim 1, does not include the particulars of the subcombination, such as the coextensive length and width, as recited in subcombination claim 7. The subcombination has separate utilities, such as wall panels, roadway surfaces, flooring structures, etc...

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 7-26 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

2. This application is in condition for allowance except for the presence of claims 7-26 to an invention non-elected by original presentation. Applicant is given ONE MONTH or THIRTY DAYS from the date of this letter, whichever is longer, to cancel the noted claims or take other appropriate action (37 CFR 1.144). Failure to take action during this period will be treated as authorization to cancel the noted claims by Examiner's Amendment and pass the case to issue. Extensions of time under 37 CFR 1.136(a) will not be permitted since this application will be passed to issue.

The prosecution of this case is closed except for consideration of the above matter.

Mark T. Le
Primary Examiner
Art Unit: 3617

10/15/04